

MONTANA LEGISLATIVE HISTORY

Chapter 52 192001

Bill H 234 S _____

Original bill & history ✓ c

H. Committee on Business & Labor

Hearing Date(s) 1/16 ✓ c

1/18 ✓ c

_____ c

_____ c

Date Out _____ c

S. Committee on Business & Labor

Hearing Date(s) 3/1 ✓ c

_____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes ✓ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

1/10	Introduced		
1/10	Referred to Education		
1/10	Fiscal Note Requested		
1/25	Fiscal Note Received		
1/26	Hearing		
1/27	Revised Fiscal Note Requested		
1/29	Fiscal Note Printed		
1/31	Revised Fiscal Note Received		
2/05	Committee Executive Action--Bill Passed	16	2
2/06	Committee Report--Bill Passed		
2/06	Rereferred to Appropriations		
2/12	Hearing		
2/17	Tabled in Committee		
3/24	Missed Deadline for Appropriation Bill Transmittal		

HB 233 Introduced by Newman

LC0746 Drafter: Lane

Revise Hate Crimes Law

1/11	Introduced		
1/11	Referred to Judiciary		
2/01	Hearing		
2/06	Tabled in Committee		
2/23	Missed Deadline for General Bill Transmittal		

HB 234 Introduced by Lawson, et al.

LC1064 Drafter: Petesch

Uniform Electronic Transactions Act

By Request of Secretary of State

1/10	Introduced		
1/10	Referred to Business and Labor		
1/16	Hearing		
1/18	Committee Executive Action--Bill Passed as Amended	19	0
1/18	Committee Report--Bill Passed as Amended		
1/22	2nd Reading Passed	99	1
1/23	3rd Reading Passed	99	0
Transmitted to Senate			
1/24	Referred to Business and Labor		
3/01	Hearing		
3/01	Committee Executive Action--Bill Concurred	8	0
3/01	Committee Report--Bill Concurred		
3/03	2nd Reading Concurred on Voice Vote	43	0
3/05	3rd Reading Concurred	49	0
Returned to House			
3/06	Sent to Enrolling		
3/06	Returned from Enrolling		
3/08	Signed by Speaker		
3/08	Signed by President		
3/08	Transmitted to Governor		
3/16	Signed by Governor		
3/16	Chapter Number Assigned		
	Chapter Number 52		
	Effective Date: 7/01/2001 - All Sections		

BILL NO. 234

INTRODUCED BY

(Primary Sponsor)

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE UNIFORM ELECTRONIC TRANSACTIONS ACT; ALLOWING BUSINESS, COMMERCIAL, AND GOVERNMENTAL TRANSACTIONS TO OCCUR ELECTRONICALLY; PROVIDING RECOGNITION OF ELECTRONIC RECORDS, SIGNATURES, AND TRANSACTIONS; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Short title. [Sections 1 through 18] may be cited as the "Uniform Electronic Transactions Act".

NEW SECTION. Section 2. Definitions. In [sections 1 through 18]:

(1) "agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(2) "automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(3) "computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(4) "contract" means the total legal obligation resulting from the parties' agreement as affected by [sections 1 through 18] and other applicable law.

(5) "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(6) "electronic agent" means a computer program or an electronic or other automated means used

1 independently to initiate an action or respond to electronic records or performances, in whole or
2 without review or action by an individual.

3 (7) "electronic record" means a record created, generated, sent, communicated, recei
4 stored by electronic means.

5 (8) "electronic signature" means an electronic sound, symbol, or process attached to or k
6 associated with a record and executed or adopted by a person with the intent to sign the record

7 (9) "governmental agency" means an executive, legislative, or judicial agency, department,
8 commission, authority, institution, or instrumentality of the federal government or of a state or of a c
9 municipality, or other political subdivision of a state.

10 (10) "information" means data, text, images, sounds, codes, computer programs, sof
11 databases, or the like.

12 (11) "information processing system" means an electronic system for creating, generating, se
13 receiving, storing, displaying, or processing information.

14 (12) "person" means an individual, corporation, business trust, estate, trust, partnership, l
15 liability company, association, joint venture, governmental agency, public corporation, or any othe
16 or commercial entity.

17 (13) "record" means information that is inscribed on a tangible medium or that is stored
18 electronic or other medium and is retrievable in perceivable form.

19 (14) "security procedure" means a procedure employed for the purpose of verifying th
20 electronic signature, record, or performance is that of a specific person or for detecting changes or
21 in the information in an electronic record. The term includes a procedure that requires the use of algor
22 or other codes, identifying words or numbers, encryption, or callback or other acknowledg
23 procedures.

24 (15) "state" means a state of the United States, the District of Columbia, Puerto Rico, the L
25 States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United St
26 The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal la
27 formally acknowledged by a state.

28 (16) "transaction" means an action or set of actions occurring between two or more per
29 relating to the conduct of business, commercial, or governmental affairs.

30

NEW SECTION. Section 3. Scope. (1) Except as otherwise provided in subsection (2), [sections 1 through 18] apply to electronic records and electronic signatures relating to a transaction.

(2) [Sections 1 through 18] do not apply to a transaction to the extent it is governed by:

(a) a law governing the creation and execution of wills, codicils, or testamentary trusts; and

(b) Title 30, chapter 1, other than 30-1-107 and 30-1-206, and chapters 3 through 9.

(3) [Sections 1 through 18] apply to an electronic record or electronic signature otherwise excluded from the application of [sections 1 through 18] under subsection (2) to the extent it is governed by a law other than those specified in subsection (2).

(4) A transaction subject to [sections 1 through 18] is also subject to other applicable substantive law.

NEW SECTION. Section 4. Use of electronic records and electronic signatures -- variation by agreement. (1) [Sections 1 through 18] do not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(2) [Sections 1 through 18] apply only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(3) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(4) Except as otherwise provided in [sections 1 through 18], the effect of any of its provisions may be varied by agreement. The presence in certain provisions of [sections 1 through 18] of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(5) Whether an electronic record or electronic signature has legal consequences is determined by [sections 1 through 18] and other applicable law.

NEW SECTION. Section 5. Construction and application. [Sections 1 through 18] must be construed and applied:

- 1 (1) to facilitate electronic transactions consistent with other applicable law;
- 2 (2) to be consistent with reasonable practices concerning electronic transactions and with
- 3 continued expansion of those practices; and
- 4 (3) to effectuate its general purpose to make uniform the law with respect to the subject
- 5 [sections 1 through 18] among states enacting it.

6

7 **NEW SECTION. Section 6. Legal recognition of electronic records, electronic signatures,**

8 **electronic contracts.** (1) A record or signature may not be denied legal effect or enforceability solely

9 because it is in electronic form.

10 (2) A contract may not be denied legal effect or enforceability solely because an electronic record

11 was used in its formation.

12 (3) If a law requires a record to be in writing, an electronic record satisfies the law.

13 (4) If a law requires a signature, an electronic signature satisfies the law.

14

15 **NEW SECTION. Section 7. Provision of information in writing -- presentation of records.** (1)

16 parties have agreed to conduct a transaction by electronic means and a law requires a person to provide

17 send, or deliver information in writing to another person, the requirement is satisfied if the information

18 provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the

19 recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the

20 sender or its information processing system inhibits the ability of the recipient to print or store the

21 electronic record.

22 (2) If a law other than [sections 1 through 18] requires a record to be posted or displayed in a

23 certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information

24 that is formatted in a certain manner, the following rules apply:

25 (a) The record must be posted or displayed in the manner specified in the other law.

26 (b) Except as otherwise provided in subsection (4)(b), the record must be sent, communicated

27 or transmitted by the method specified in the other law.

28 (c) The record must contain the information formatted in the manner specified in the other law.

29 (3) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic

30 record is not enforceable against the recipient.

(4) The requirements of this section may not be varied by agreement, but:

(a) to the extent a law other than [sections 1 through 18] requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (1) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(b) a requirement under a law other than [sections 1 through 18] to send, communicate, or transmit a record by first-class mail, postage prepaid, or regular United States mail may be varied by agreement to the extent permitted by the other law.

NEW SECTION. Section 8. Attribution and effect of electronic record and electronic signature.

(1) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(2) The effect of an electronic record or electronic signature attributed to a person under subsection (1) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

NEW SECTION. Section 9. Effect of change or error. If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(a) promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

1 (b) takes reasonable steps, including steps that conform to the other person's reasonable
2 instructions, to return to the other person or, if instructed by the other person, to destroy the consideration
3 received, if any, as a result of the erroneous electronic record; and

4 (c) has not used or received any benefit or value from the consideration, if any, received from
5 other person.

6 (3) If neither subsection (1) nor (2) applies, the change or error has the effect provided by other
7 law, including the law of mistake, and the parties' contract, if any.

8 (4) Subsections (2) and (3) may not be varied by agreement.
9

10 **NEW SECTION. Section 10. Notarization and acknowledgment.** If a law requires a signature
11 record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the
12 electronic signature of the person authorized to perform those acts, together with all other information
13 required to be included by other applicable law, is attached to or logically associated with the signature
14 or record.
15

16 **NEW SECTION. Section 11. Retention of electronic records -- originals.** (1) If a law requires that
17 a record be retained, the requirement is satisfied by retaining an electronic record of the information in the
18 record that:

19 (a) accurately reflects the information set forth in the record after it was first generated in its final
20 form as an electronic record or otherwise; and

21 (b) remains accessible for later reference.

22 (2) A requirement to retain a record in accordance with subsection (1) does not apply to an
23 information the sole purpose of which is to enable the record to be sent, communicated, or received.

24 (3) A person may satisfy subsection (1) by using the services of another person if the
25 requirements of that subsection are satisfied.

26 (4) If a law requires a record to be presented or retained in its original form, or provides
27 consequences if the record is not presented or retained in its original form, that law is satisfied by an
28 electronic record retained in accordance with subsection (1).

29 (5) If a law requires retention of a check, that requirement is satisfied by retention of an electronic
30 record of the information on the front and back of the check in accordance with subsection (1).

(6) A record retained as an electronic record in accordance with subsection (1) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after [the effective date of this act] specifically prohibits the use of an electronic record for the specified purpose.

(7) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

NEW SECTION. Section 12. Admissibility in evidence. In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

NEW SECTION. Section 13. Automated transaction. In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and that the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(3) The terms of the contract are determined by the substantive law applicable to it.

NEW SECTION. Section 14. Time and place of sending and receipt. (1) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(a) is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(b) is in a form capable of being processed by that system; and

(c) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient that is under the control of the recipient.

(2) Unless otherwise agreed between a sender and the recipient, an electronic record is received when:

1 (a) it enters an information processing system that the recipient has designated or uses for
2 purpose of receiving electronic records or information of the type sent and from which the recipient is a
3 to retrieve the electronic record; and

4 (b) it is in a form capable of being processed by that system.

5 (3) Subsection (2) applies even if the place the information processing system is located
6 different from the place the electronic record is considered to be received under subsection (4).

7 (4) Unless otherwise expressly provided in the electronic record or agreed between the sender and
8 the recipient, an electronic record is considered to be sent from the sender's place of business and to be
9 received at the recipient's place of business. For purposes of this subsection, the following rules apply

10 (a) If the sender or the recipient has more than one place of business, the place of business of the
11 person is the place having the closest relationship to the underlying transaction.

12 (b) If the sender or the recipient does not have a place of business, the place of business is the
13 sender's or recipient's residence, as the case may be.

14 (5) An electronic record is received under subsection (2) even if no individual is aware of it
15 receipt.

16 (6) Receipt of an electronic acknowledgment from an information processing system described
17 in subsection (2) establishes that a record was received but, by itself, does not establish that the content
18 sent corresponds to the content received.

19 (7) If a person is aware that an electronic record purportedly sent under subsection (1), or
20 purportedly received under subsection (2), was not actually sent or received, the legal effect of the sending
21 or receipt is determined by other applicable law. Except to the extent permitted by the other law, the
22 requirements of this subsection may not be varied by agreement.

23

24 **NEW SECTION. Section 15. Transferable records.** (1) In this section, "transferable record" means
25 an electronic record that:

26 (a) would be a note under Title 30, chapter 3, or a document under Title 30, chapter 7, if the
27 electronic record were in writing; and

28 (b) the issuer of the electronic record expressly has agreed is a transferable record.

29 (2) A person has control of a transferable record if a system employed for evidencing the transfer
30 of interests in the transferable record reliably establishes that person as the person to which the

1 transferable record was issued or transferred.

2 (3) A system satisfies subsection (2), and a person is considered to have control of a transferable
3 record, if the transferable record is created, stored, and assigned in a manner that:

4 (a) a single authoritative copy of the transferable record exists that is unique, identifiable, and,
5 except as otherwise provided in subsections (3)(d) through (3)(f), unalterable;

6 (b) the authoritative copy identifies the person asserting control as:

7 (i) the person to which the transferable record was issued; or

8 (ii) if the authoritative copy indicates that the transferable record has been transferred, the person
9 to which the transferable record was most recently transferred;

10 (c) the authoritative copy is communicated to and maintained by the person asserting control or
11 its designated custodian;

12 (d) copies or revisions that add or change an identified assignee of the authoritative copy can be
13 made only with the consent of the person asserting control;

14 (e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy
15 that is not the authoritative copy; and

16 (f) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

17 (4) Except as otherwise agreed, a person having control of a transferable record is the holder, as
18 defined in 30-1-201(20), of the transferable record and has the same rights and defenses as a holder of
19 an equivalent record or writing under Title 30, chapters 1 through 9, including, if the applicable statutory
20 requirements under 30-3-302(1), 30-7-501, or 30-9-350 are satisfied, the rights and defenses of a holder
21 in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser,
22 respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights
23 under this subsection.

24 (5) Except as otherwise agreed, an obligor under a transferable record has the same rights and
25 defenses as an equivalent obligor under equivalent records or writings under Title 30, chapters 1 through
26 9.

27 (6) If requested by a person against which enforcement is sought, the person seeking to enforce
28 the transferable record shall provide reasonable proof that the person is in control of the transferable
29 record. Proof may include access to the authoritative copy of the transferable record and related business
30 records sufficient to review the terms of the transferable record and to establish the identity of the person

1 having control of the transferable record.

2

3 **NEW SECTION. Section 16. Creation and retention of electronic records and conversion of writ**
4 **records by governmental agencies.** Each governmental agency shall determine whether, and the extent
5 to which, it will create and retain electronic records and convert written records to electronic records
6

7 **NEW SECTION. Section 17. Acceptance and distribution of electronic records by government**
8 **agencies.** (1) Except as otherwise provided in [section 11(5)], each governmental agency shall determine
9 whether, and the extent to which, it will send and accept electronic records and electronic signatures
10 and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon
11 electronic records and electronic signatures.

12 (2) To the extent that a governmental agency uses electronic records and electronic signatures
13 under subsection (1), the secretary of state, giving due consideration to security, may specify:

14 (a) the manner and format in which the electronic records must be created, generated, sent,
15 communicated, received, and stored and the systems established for those purposes;

16 (b) if electronic records must be signed by electronic means, the type of electronic signature
17 required, the manner and format in which the electronic signature must be affixed to the electronic record
18 and the identity of, or criteria that must be met by, any third party used by a person filing a document
19 to facilitate the process;

20 (c) control processes and procedures as appropriate to ensure adequate preservation, disposition,
21 integrity, security, confidentiality, and auditability of electronic records; and

22 (d) any other required attributes for electronic records that are specified for corresponding
23 nonelectronic records or reasonably necessary under the circumstances.

24 (3) Except as otherwise provided in [section 11(5)], [sections 1 through 18] do not require
25 governmental agency of this state to use or permit the use of electronic records or electronic signatures.
26

27 **NEW SECTION. Section 18. Interoperability.** (1) The secretary of state may encourage and
28 promote consistency and interoperability with similar requirements adopted by other governmental
29 agencies of this and other states and the federal government and nongovernmental persons interacting
30 with governmental agencies of this state. If appropriate, those standards may specify differing levels of

1 standards from which governmental agencies of this state may choose in implementing the most
2 appropriate standard for a particular application.

3 (2) The secretary of state may adopt rules to implement [sections 1 through 18] for state
4 government that are consistent with the provisions of Title 2, chapter 20.

5
6 **NEW SECTION. Section 19. Codification instruction.** [Sections 1 through 18] are intended to be
7 codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through 18].

8
9 **NEW SECTION. Section 20. Severability.** If a part of [this act] is invalid, all valid parts that are
10 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
11 applications, the part remains in effect in all valid applications that are severable from the invalid
12 applications.

NEW SECTION. Section 21. Effective date. [This act] is effective July 1, 2001.

NEW SECTION. Section 22. Applicability. [This act] applies to any electronic record or electronic
signature created, generated, sent, communicated, received, or stored on or after July 1, 2001.

- END -

INDEX TO BILLS IN COMMITTEE

September 10, 2001

- Committee: (H) Business and Labor -

01:34 PM

**HOUSE
BUSINESS AND LABOR**

CHAIR: McKenney, Joe

VICE CHAIR: Bitney, Rod
Matthews, Gary

MEMBERS:

Bookout-Reinicke, Sylvia

Brown, Roy

Fritz, Nancy

Gallik, Dave

Galvin-Halcro, Kathleen

Himmelberger, Dennis

Juneau, Carol

Keane, Jim

Laible, Rick

Lawson, Bob

Musgrove, John

Price, William

Rome, Allen

Steinbeisser, Donald

Tramelli, Brett

Whitaker, James

SECRETARY: Nofsinger, Jane

LEGISLATIVE STAFF: Higgins, Gordon

INDEX TO BILLS IN COMMITTEE

September 10, 2001

- Committee: (H) Business and Labor -

01:34 PM

HB 177 SPONSOR: Keane, Jim SHORT TITLE: Extend unemployment benefits for employees of Montana Resources
REFERRED ON: 01/05/2001 HEARD ON: 01/12/2001
EXECUTIVE ACTION: 01/15/2001 - Bill Passed -- VOTE: 17 - 2
FINAL DISPOSITION: 03/24/2001 (H) Missed Deadline for Appropriation Bill Transmitt

HB 194 SPONSOR: Bookout-Reinicke, Sylvia SHORT TITLE: Revise overtime and minimum wage exemptions for outside sales
REFERRED ON: 01/06/2001 HEARD ON: 01/15/2001
EXECUTIVE ACTION: 01/15/2001 - Bill Passed as Amended -- VOTE: 13 - 6
FINAL DISPOSITION: 02/19/2001 Chapter Number Assigned

HB 198 SPONSOR: Gallik, Dave SHORT TITLE: Made in Montana virtual store on internet
REFERRED ON: 01/06/2001 HEARD ON: 01/12/2001
EXECUTIVE ACTION: 01/22/2001 - Bill Passed as Amended -- VOTE: 14 - 5
FINAL DISPOSITION: 02/23/2001 (H) Missed Deadline for General Bill Transmittal

HB 218 SPONSOR: Facey, Tom SHORT TITLE: Regulate potable water haulers and sellers
REFERRED ON: 01/08/2001 HEARD ON: 01/15/2001
EXECUTIVE ACTION: 01/17/2001 - Bill Passed as Amended -- VOTE: 19 - 0
FINAL DISPOSITION: 04/30/2001 Chapter Number Assigned

HB 220 SPONSOR: Lawson, Bob SHORT TITLE: Revise credit union laws
REFERRED ON: 01/09/2001 HEARD ON: 01/17/2001
EXECUTIVE ACTION: 01/17/2001 - Bill Passed as Amended -- VOTE: 19 - 0
FINAL DISPOSITION: 02/22/2001 Chapter Number Assigned

HB 230 SPONSOR: Price, William SHORT TITLE: Revise boiler inspection requirements
REFERRED ON: 01/10/2001 HEARD ON: 01/16/2001
EXECUTIVE ACTION: 01/17/2001 - Bill Passed as Amended -- VOTE: 19 - 0
FINAL DISPOSITION: 05/01/2001 Chapter Number Assigned

HB 234 SPONSOR: Lawson, Bob SHORT TITLE: Uniform electronic transactions act
BY REQUEST OF: Secretary Of State
REFERRED ON: 01/10/2001 HEARD ON: 01/16/2001
EXECUTIVE ACTION: 01/18/2001 - Bill Passed as Amended -- VOTE: 19 - 0
FINAL DISPOSITION: 03/16/2001 Chapter Number Assigned

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR**

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on January 16, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: Rep. Rod Bitney, Vice Chairman (R)
Rep. Bob Lawson (R)
Rep. Allen Rome (R)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB235, HB230, HB234, HB245,
HB255, 1/15/2001
Executive Action: HB 136, HB145, HB235, HB255

{Tape : 1; Side : A; Approx. Time Counter : 0}

employees working 35 hours or more in a structured work week and enforcement would fall under the Department of Labor.

REP. LAIBLE asked REP. GALLIK if he thought employers would start hiring people for 32 hours a week to avoid the wage law and some questions about how many employers and employees would be covered by this law. REP. GALLIK replied some might and that he did not know how many companies would be under this law.

Closing by Sponsor:

REP. GALLIK called this a fairness issue and said that for employers to pay workers \$8.20 hour was only fair if they were receiving taxpayer funds. He said this was a way to create good jobs.

HEARING ON HEARING ON HB234

Sponsor: REP. BOB LAWSON. HD80, Whitefish

Proponents: Janice Doggett, Chief Counsel, Secretary of State
Joe Mazurek, attorney
Tony Herbert, ISD/DOA
Stan Kaleczyc, Verizon Wireless
Curtis Larsen, Montana State Fund
Claudia Clifford, State Auditor's Office
John Cadby, Montana Bankers' Assn.
Jeanne Bauman, Montana Credit Unions League
Al Montrelli, Montana Insurance Advisors
Roger Halverson, Montana Assn. Of Realtors

Opponents: None

Opening Statement by Sponsor:

REP. BOB LAWSON. HD80, Whitefish, said the bill would create a uniform electronic transaction act which would make electronic transmission the equivalent of manually signed papers. The act would provide uniform rules to make sure transactions made electronically are as enforceable as paper transactions. It would provide for an electronic signature to be the same as a paper signature.

Proponents' Testimony:

Ms. Doggett presented facts to the committee regarding the Federal Electronic Transaction Act. EXHIBIT(2) She said 23 states has enacted similar legislation.

{Tape : 2; Side : B; Approx. Time Counter : 0}

Mr. Mazurek said it is desirable for states to have similar legislation. He said had participated on a national committee which drafted this law. He added that if enough states enact this law, it will allow state law to dominate federal law.

Mr. Herbert emphasized there are a lot more electronic transactions on the way and this law will allow more business to be done this way. He said his office was working on a potential amendment to establish technical standards.

Mr. Kaleczyc said he thought it was important legislation, he supported it and thought it should be enacted. He did offer a clarifying amendment which he said a number of states had adopted which would allow individuals to activate phone service electronically. **EXHIBIT(3)**

{Tape : 2; Side : B; Approx. Time Counter : 16}

Mr. Larsen urged the committee to adopt the bill while he expressed one minor concern that it may conflict with a previous bill.

Mr. Cadby supported and urged the committee to pass the bill. He said the bill facilitated commerce and will allow business to be conducted across state lines.

Ms. Bauman supported the bill and said it opened up electronic transactions.

Mr. Montrelli said he supported the bill.

Mr. Halver urged the committee to pass the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. GALLIK asked **Mr. Kaleczyc** why he felt it was necessary to include the term telephonic. **Mr. Kaleczyc** said other states had done so and it also appears in the federal law. **REP. GALLIK** also expressed the concern that if we tinkered with the bill it might become too unlike other state bills to allow states' rights to dominate federal rights.

{Tape : 3; Side : A; Approx. Time Counter : 0}

REP. LAIBLE asked Mr. Mazurek about the proposed amendment. Mr. Mazurek replied it was supposed to be general enabling legislation and not a bill specific to an industry.

Closing by Sponsor:

REP. LAWSON urged the committee to pass the bill saying it was a uniform act and that passing the bill would also show a confidence in electronic transactions as a legal process. He added that while allowing electronic transactions the act does not prohibit paper transactions.

{Tape : 3; Side : A; Approx. Time Counter : 11.2}

HEARING ON HEARING ON HB255

Sponsor: REP. CHRISTOPHER HARRIS, HD30, Bozeman

Proponents: Michael Delaney, self
Edgar Donohoe, self

Opponents: Mark Staples, Montana Tavern Owners Assn.
Gene Burgad, Rex Restaurant, Billings
Laura Fix, River Grill Restaurant, Helena
Don Hedges, HD97, Sheridan County
Barb Morris, Jorgenson's Restaurant, Helena
Kati Kintli, attorney
John Hayes, Cascade County Tavern Owners Assn.
Bob Fletcher, Cannery Lounge, Bozeman
Ralph Ferraro, Montana Tavern Owners Assn.
Lee Ask, Gambling Control Division
Carl Solvie, Grandtree Lounge, Bozeman
Rich Miller, Gaming Industry Assn.

Opening Statement by Sponsor:

REP. CHRISTOPHER HARRIS, HD30, Bozeman, said this is a simple bill in concept which allows a holder of a beer license to convert to a full liquor license for a \$75,000 fee. The fees would be deposited in a Dollars For Education Fund to be used on K-12 and higher education. He said the bill is not intended to expand the total number of licenses but to convert existing ones.

Proponents' Testimony:

Mr. Delaney said he specialized in restaurant development. He pointed out there were many people who would like to come to

(2)

INTRODUCTIONS & ADOPTIONS OF UNIFORM ACTS



> A Few Pages About the...

EXHIBIT

DATE

HB

2
E-16-01
234

UNIFORM ELECTRONIC TRANSACTIONS ACT

PURPOSE:

The Uniform Electronic Transactions Act is designed to support the use of electronic commerce. The primary objective of this act is to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures, removing barriers to electronic commerce.

ORIGIN:

Completed by the Uniform Law Commissioners in 1999.

APPROVED BY:

American Bar Association

ENDORSED BY:

American Council of Life Insurance
Equipment Leasing Association of America

STATE ADOPTIONS:

Arizona	Iowa	North Carolina
California	Kansas	Ohio
Delaware	Kentucky	Oklahoma
Florida	Maine	Pennsylvania
Hawaii	Maryland	Rhode Island
Idaho	Michigan	South Dakota
Indiana	Minnesota	Utah
	Nebraska	Virginia

2001 INTRODUCTIONS:

District of Columbia	New Jersey	US Virgin Islands
Montana	Oregon	

For any further information regarding the Uniform Electronic Transactions Act, please contact John McCabe or Katie Robinson at 312-915-0195.

INTRODUCTIONS & ADOPTIONS Of Uniform Acts



> Summary

UNIFORM ELECTRONIC TRANSACTIONS ACT

The Uniform Law Commissioners promulgated the Uniform Electronic Transactions Act (UETA) in 1999. It is the first comprehensive effort to prepare state law for the electronic commerce era. Many states have already adopted legislation pertaining to such matters as digital signatures, but UETA represents the first national effort at providing some uniform rules to govern transactions in electronic commerce that should serve in every state. Although related to the Uniform Commercial Code, the rules of UETA are primarily for "electronic records and electronic signatures relating to a transaction" that is not subject to any article of the Uniform Commercial Code, except for Articles 2 and 2A. A "transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs. Much is excluded in this definition, including required notices, disclosures or communications by courts and governmental agencies.

UETA applies only to transactions in which each party has agreed by some means to conduct them by electronically. Agreement is essential. Nobody is forced to conduct to electronic transactions. Parties to electronic transactions come under UETA, but they may also opt out. They may vary, waive or disclaim most of the provisions of UETA by agreement, even if it is agreed that business will be transacted by electronic means. The rules in UETA are almost all default rules that apply only in the event the terms of an agreement do not govern.

Electronic commerce means, of course, persons doing business with other persons with computers and telephone or television cable lines. The Internet is the great marketplace for these kinds of transactions; a marketplace developing almost daily in 1999 (and presumably into the foreseeable future). The outlines and boundaries for this marketplace are still unknown and developments are not predictable. It is not possible to predict with any certainty how new law should develop to serve that marketplace or any other electronic marketplace that might develop in the future.

However, a few things are known about the existing electronic marketplace and there are some assumptions about the law that governs transactions within it that can be made with reasonable certainty in 1999, and that will continue to be reasonably certain into the future. Electronic transactions are conducted by communicating digitized information from one person to another. That digitized information can be communicated and stored without the use of paper, and the basic language of electronic transactions is fully and inherently paperless. In fact, relying on paper for the memorialization of transactions and upon manual signatures for verifying them are most likely to impede electronic transactions, adding to their costs. And there is no benefit to any party to an electronic transaction, with very few exceptions, in requiring that they be memorialized on paper with signatures that are manual. The need to expand requirements in the

law for writings and manual signatures so that electronic records and electronic signatures will satisfy those requirements, is the one thing that is reasonably certain with respect to electronic transactions.

UETA does not attempt to create a whole new system of legal rules for the electronic marketplace. The objective of UETA is to make sure that transactions in the electronic marketplace are as enforceable as transactions memorialized on paper and with manual signatures, but without changing any of the substantive rules of law that apply. This is a very limited objective--that an electronic record of a transaction is the equivalent of a paper record, and that an electronic signature will be given the same legal effect, whatever that might be, as a manual signature. The basic rules in UETA serve this single purpose.

The basic rules are in Section 7 of UETA. The most fundamental rule in Section 7 provides that a "record or signature may not be denied legal effect or enforceability solely because it is in electronic form." The second most fundamental rule says that "a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation." The third most fundamental rule states that any law that requires a writing will be satisfied by an electronic record. And the fourth basic rule provides that any signature requirement in the law will be met if there is an electronic signature.

Almost all of the other rules in UETA serve the fundamental principles set out in Section 7, and tend to answer basic legal questions about the use of electronic records and signatures. Thus, Section 15 determines when information is legally sent or delivered in electronic form. It establishes when electronic delivery occurs--when an electronic record capable of retention by the recipient is legally sent and received. The traditional and statutory rules that govern mail delivery of the paper memorializing a transaction can't be applied to electronic transactions. Electronic rules have to be devised, and UETA provides the rule.

Another rule that supports the general validity of electronic records and signatures in transactions is the rule on attribution in Section 9. Electronic transactions are mostly faceless transactions between strangers. UETA states that a signature is attributable to a person if it is an act of that person, and that act may be shown in any manner. If a security procedure is used, its efficacy in establishing the attribution may be shown. In the faceless environment of electronic transactions, the obvious difficulties of identification and attribution must be overcome. UETA, Section 9 gives guidance in that endeavor.

Much has been much written about digital signatures in electronic commerce. What is a digital signature? It is really a method of encryption that utilizes specific technology. In the faceless environment of the electronic marketplace and particularly the Internet, such technologies are highly useful.

It is not wholly certain what the legal impact of these technologies should be. For that reason UETA may not be characterized as a digital signature statute. It does facilitate the use of digital signatures and other security procedures in rules such as the one in Section 9 on attribution. Section 10 provides some rules on errors and changes in messages. It favors the party who conforms to the security procedure used in the specific transaction against the party who does not, in the event there is a dispute over the content of the message.

But nothing in UETA requires the use of a digital signature or any security procedure. It is technologically neutral. Persons can use the most up-to-date digital signature technology, or less sophisticated security procedures such as passwords or pin numbers. Whatever parties to transactions use for attribution

or assuring message integrity may be offered in evidence if there is a dispute.

UETA is procedural, not substantive. It does not require anybody to use electronic transactions or to rely upon electronic records and signatures. It does not prohibit paper records and manual signatures. Basic rules of law, like the general and statutory law of contracts, continue to apply as they have always applied.

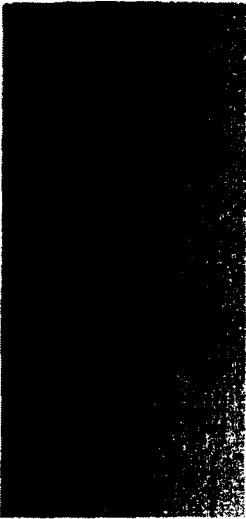
There are three provisions in UETA that need special attention, and that are not directly in support of the basic rules in Section 7. First, UETA excludes transactions subject to the Uniform Commercial Code, except for those under Articles 2 and 2A, the Uniform Computer Information Transactions Act, laws governing estates and trusts, and any other specific laws that a state wants to exempt from the rules applied in UETA. Some writing and signature requirements in state law do not impact the enforceability of transactions, and have objectives that should not be affected by adoption of a statute like UETA. The limitation of UETA to agreed electronic transactions will eliminate any conflict with other writing requirements for the most part. However, there is some room for jurisdiction-specific tailoring of UETA permitted in each state, to assure no conflict. Exclusions should be carefully and conservatively selected. Most law relating to contracts and transactions between persons will serve the public better if electronic records and signatures are recognized.

Second, UETA provides for "transferable records" in Section 16. Notes under Article 3 and documents under Article 7 of the Uniform Commercial Code are "transferable records" when in electronic form. Notes and documents are negotiable instruments. The quality of negotiation relies upon the note or document as the single, unique token of the obligations and rights embodied in the note or document. Maintaining that quality as a unique token for electronic records is the subject of Section 16. A transferable record exists when there is a single authoritative copy of that record existing and unalterable in the "control" of a person. A person in "control" is a "holder" for the purposes of transferring or negotiating that record under the Uniform Commercial Code. Section 16 is essentially a supplement to the Uniform Commercial Code, until its relevant articles can be fully amended or revised to accommodate electronic instruments.

Third, UETA clearly validates contracts formed by electronic agents. Electronic agents are computer programs that are implemented by their principals to do business in electronic form. They operate automatically, without immediate human supervision, though they are certainly not autonomous agents. They are a kind of tool that parties use to communicate. Section 14 provides that a person may form a contract by using an electronic agent. That means that the principal, which is the person or entity which provides the program to do business, is bound by the contract that its agent makes.

When somebody buys something on the Internet, therefore, that person will be assured that the agreement is valid, even though the transaction is conducted automatically by a computer that solicits orders and payment information. Did anyone really think that every order on the Internet involves a direct communication with a human being?

Three sections of UETA deal with electronic records that state governmental agencies create and retain. Section 17 allows a state to designate one agency or officer as the authority on creation and retention of governmental records. Section 18 allows a state to designate which agency or officer regulates the communication of electronic records and use of electronic signatures between agencies and other persons. Section 19 allows a state to designate an agency or



officer to set standards that promote consistency and interoperability between state agencies with respect to the use of electronic records and signatures. All three sections are optional sections, there for the state that needs them, but not mandatory for all states in order to implement uniformity. These are very important provisions, however, because they provide a state with some root law for organizing the electronic business of the state. They should be given very serious consideration in every state.

It is not possible to cover every aspect of UETA in a short summary. This summary highlights some important aspects. The adoption of these rules will be a boon to electronic commerce. They will not artificially skew any market or make any substantive law relating to contracts any different from that governing transactions memorialized on paper. Every state should adopt them as quickly as possible.

[Introductions & Adoptions of Uniform Acts](#) || [Drafting Projects Underway](#) || [Topics Under Discussion](#)
[What's New](#) || [Meetings](#) || [Newsroom](#) || [About Us](#) || [Site Map](#) || [Links](#) || [Contact Us](#)
[BACK HOME](#)

©2000 National Conference of Commissioners on Uniform State Laws

Amendment Proposed by Verizon Wireless to HB 234
Uniform Electronic Transactions Act

1. Page 1, Line 28 :

After the words "magnetic, wireless,"

Insert: "telephonic,"

2. Page 3, Line 11:

Add a new subsection 5 to "New Section. Section 3 Scope" as follows:

"(5)(a) For all purposes under this Act, an electronic signature shall also be deemed to include a sealed package with telephone equipment contained inside the package and a written contract relating to the sale or lease of the telephone equipment contained therein or to the providing of telephone services outside the package and which, in a reasonably prominent manner (1) notifies the recipient that opening the sealed package constitutes acceptance of the terms and conditions of the written contract that is located outside the package; (2) urges the recipient to read such contract; and (3) informs the recipient that should the recipient ^{with} not to accept the terms and conditions of such contract, that the recipient shall not be bound by the contract, provided that the entire contents of the package are returned to a specified address within a specified period of time, which shall be no less than fifteen (15) days after receipt of the package.

(b) Any recipient of such package described in subparagraph (5)(a) which is in compliance with this section, who does not return the contents of such package within the time period specified in the disclosures accompanying such package as provided in subparagraph (5)(a) shall be deemed to have intentionally manifested his or her assent to all the terms and conditions contained in the package."

Explanation: These amendments are intended to facilitate the marketing and delivery of cellular and other telephone equipment by equipment providers by mail or other delivery service, while providing protection to the parties under the Uniform Electronic Transactions Act.

Under this marketing program, a consumer desiring telephone equipment may call the equipment provider by telephone and order the equipment, such as a cellular telephone. The telephone is sent by mail or other delivery service (such as UPS or Federal Express) to the consumer. Under these amendments, the consumer must be warned on the outside of the package in a prominent manner that opening the package constitutes acceptance of the contract to use the equipment, that the consumer should read the enclosed contract, and that the consumer has a period of time, no less than

15 days, to return the equipment. The consumer may activate the equipment by calling the cellular provider and following the instructions for activation.

These amendments permit this type of convenient ordering and delivery to occur, while the parties have the benefit of the Uniform Electronic Transactions Act.

This method of delivery may be particularly convenient for Montanans who can not easily go to a retail facility to order telephone equipment or prefer the convenience of home delivery of requested telephone equipment and services.

Consumers will benefit from this clarification because it will give them a broader range of choices in goods and services that they will be able to contract for by utilizing the telephone. Those offering goods and services to consumers, like Verizon Wireless, will feel confident that if a telephone is used to obtain an electronic signature, such signature will be binding and enforceable. Consumers will continue to be protected, as with all types of electronic signatures, because as required by HB 234, the electronic signature must be logically associated with a record and adopted by a person with the intent to sign such record.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on January 18, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: None.

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB279, HJ7, 1/18/2001
Executive Action: HB234, HJ7

{Tape : 1; Side : A; Approx. Time Counter : 0}

Witte said she did not know but would check to see how this care was reimbursed.

Closing by Sponsor:

REP. MCKENNEY said he appreciated the hours and years of hard work it had taken to get this bill put together. He said this bill is for patients to be provided with the best care. He told the committee he would appreciate their support.

{Tape : 2; Side : A; Approx. Time Counter : 7.8}

EXECUTIVE ACTION ON HB234

Motion: REP. LAWSON moved that HB234 DO PASS.

Discussion:

REP. LAWSON offered a clarifying amendment and written testimony from Verizon. EXHIBIT(11)EXHIBIT(12)

Motion/Vote: REP. LAWSON moved that HB234 DO PASS AS AMENDED.

Motion carried unanimously.

EXECUTIVE ACTION ON HJ7

Motion/Vote: REP. BROWN moved that HJ7 DO PASS. Motion carried unanimously.

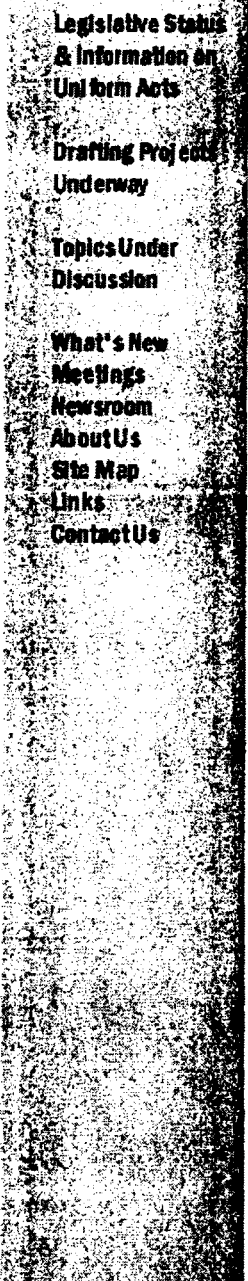
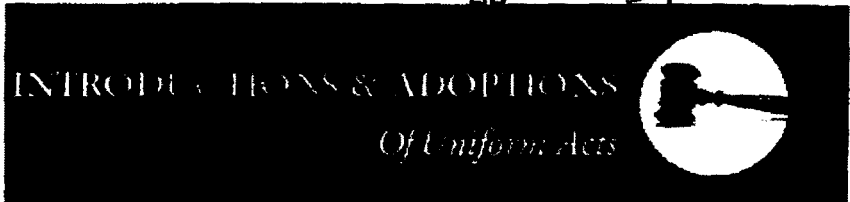
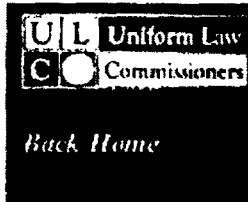
ADJOURNMENT

Adjournment: 11:00 A.M.

REP. JOE MCKENNEY, Chairman

JANE NOFSINGER, Secretary

JM/JN



> Why States Should Adopt...

THE UNIFORM ELECTRONIC TRANSACTIONS ACT

The Uniform Electronic Transactions Act (UETA) allows the use of electronic records and electronic signatures in any transaction, except transactions subject to the Uniform Commercial Code. The fundamental purpose of this act is to remove perceived barriers to electronic commerce.

The UETA is a procedural statute. It does not mandate either electronic signatures or records, but provides a means to effectuate transactions when they are used. The primary objective is to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures.

There are many reasons why every state should adopt the Uniform Electronic Transactions Act.

- UETA defines and validates electronic signatures. An electronic signature is defined as "an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record."
- UETA removes writing and signature requirements which create barriers to electronic transactions.
- UETA insures that contracts and transactions are not denied enforcement because electronic media are used.
- UETA insures that courts accept electronic records into evidence.
- UETA protects against errors by providing appropriate standards for the use of technology to assure party identification.
- UETA avoids having the selection of medium (paper vs. electronic) govern the outcome of any disputes or disagreements, and it assures that parties have the freedom to select the media for their transactions by agreement.
- UETA authorizes state governmental entities to create, communicate, receive and store records electronically, and encourages state governmental entities to move to electronic media.

[Introductions & Adoptions of Uniform Acts](#) || [Drafting Projects Underway](#) || [Topics Under Discussion](#)
[What's New](#) || [Meetings](#) || [Newsroom](#) || [About Us](#) || [Site Map](#) || [Links](#) || [Contact Us](#)
[BACK HOME](#)

MEMORANDUM

To: Representative Lawson
From: Janice Frankino Doggett
Re: HB 234 UETA

Several of the proponents of this bill wanted me to address the form of an electronic record and electronic signature. In my opinion, the best way to do that is to reiterate the comments to the Act as drafted by the National Code Commissioners. Nothing in this memorandum should be construed as favoring particular comments of the Commissioners; this memorandum simply sets forth these comments to provide clarification to issues raised by parties interested in this bill. This Act as drafted requires an agreement of the parties; which is to be determined by the circumstances surrounding transactions. The Commissioners have given states guidance in the definitions of electronic record and electronic signature which are defined as:

"Electronic record." An electronic record is a subset of the broader defined term "record." It is any record created, used or stored in a medium other than paper. The term is also used in this Act as a limiting definition in those provisions in which it is used.

Information procession systems, computer equipment and programs, electronic data interchange, electronic mail, voice mail, facsimile, telex, telecopying, scanning and similar technologies all qualify as "electronic" under this Act. Accordingly information stored on a computer hard drive or floppy disc, facsimiles, voice mail messages, messages on a telephone answering machine, audio and video ape recordings, among other records, all would be electronic records under this Act.

"Electronic signature." The idea of a signature is broad and not specifically defined. Whether any particular record is "signed" is a question of fact. Proof of that fact must be made under applicable law. This Act simply assures that the signature may be accomplished through electronic means. No specific technology need be used in order to create a valid signature. One's voice on an answering machine may suffice, as may the firm name on a facsimile. It also may be shown that the requisite intent was not present and accordingly the symbol, sound or process did not amount to a signature. One may use a digital signature with the requisite intention, or one may use the private key solely as an access device with no intention to sign, or otherwise accomplish a legally binding act. In any case the critical element is the intention to execute or adopt the sound or symbol or process for the purpose of signing the related record.

The definition requires that the signer execute or adopt the sound, symbol, or process with the intent to sign the record. The act of applying a sound, symbol or process to an electronic record could have differing meanings and effects. The consequences of the act and the effect of the act as a signature are determined under other applicable law.

Recd. 01/07/01

However, the essential attribute of a signature involves applying a sound, symbol or process with an intent to conduct a legally significant act. It is the intention that is understood in the law as a part of the word "sign" without the need for a definition.

This Act establishes, to the greatest extent possible, the equivalency of electronic signatures and manual signatures. Therefore the term "signature" has been used to connote and convey that equivalency. That purpose is to overcome unwarranted biases against electronic methods of signing and authenticating records. The term "authentication" used in other laws, often has a narrower meaning and purpose than an electronic signature as used in this Act. However, an authentication under any of those other laws constitutes an electronic signature under this Act.

The precise effect of an electronic signature will be determined based on the surrounding circumstances under Section 9(d).

This definition includes as an electronic signature the standard webpage click through process. For example, when a person orders goods or services through a vendor's website, the person will be required to provide information as part of a process which will result in receipt of the goods or services. When the customer ultimately gets to the last step and clicks "I agree," the person has adopted the process and has done so with the intent to associate the person with the record of that process. The actual effect of the electronic signature will be determined from all the surrounding circumstances, however, the person adopted a process which the circumstances indicate s/he intended to have the effect of getting the goods/services and being bound to pay for them. The adoption of the process carried the intent to do a legally significant act, the hallmark of a signature.

Another important aspect of this definition lies in the necessity that the electronic signature be linked or logically associated with the record. In the paper world, it is assumed that the symbol adopted by a party is attached or located somewhere in the same paper that is intended to be authenticated, e.g. an allonge firmly attached to a promissory note, or the classic signature at the end of a long contract. These tangible manifestations do not exist in the electronic environment, and accordingly, this definition expressly provides that the symbol must in some way be linked to, or connected with the electronic record being signed. This linkage is consistent with the regulations promulgated by the Food and Drug Administration.

Finally, a digital signature using public key encryption technology would qualify as an electronic signature, as would the mere inclusion of one's name as part of an e-mail message- so long as in each case the signer executed or adopted the symbol with the intent to sign.

**HOUSE OF REPRESENTATIVES
ROLL CALL**

HOUSE BUSINESS AND LABOR COMMITTEE

DATE JAN, 18, 2001

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown	✓		
Rep. Kathleen Galvin-Halcro	✓		
Rep. Carol Juneau	✓		
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz	✓		
Rep. Don Steinbeisser	✓		
Rep. Jim Whitaker	✓		
Rep. Rod Bitney	✓		
Rep. Sylvia Bookout-Reinicke	✓		
Rep. Dave Gallik	✓		
Rep. Dennis Himmelberger	✓		
Rep. Jim Keane	✓		
Rep. Bob Lawson	✓		
Rep. Bill Price	✓		
Rep. Brett Tramelli	✓		
Rep. Allen Rome	✓		

House of Representatives

Roll Call Vote

BUSINESS & LABOR COMMITTEE

DATE JAN. 18, 2001 Bill NO. HB 234 NUMBER 19-0

MOTION: Rep LAWSON MOVED DO PASS HB 234 02. agh 19-0 Voice

REP LAWSON MOVE AS AMEND DO PASS HB234

Name	AYE	NO
Rod Bitney, V.C., Majority (R)		
Gary Matthews, V.C. , Minority (D)		
Roy Brown (R)		
Dave Gallik (D)		
Kathleen Galvin-Halcro (D)		
Dennis Himmelberger (R)		
Carol Juneau (D)		
Jim Keane (D)		
Rick Laible (R)		
Bob Lawson (R)		
Nancy Rice-Fritz (D)		
John Musgrove (D)		
Bill Price (R)		
Sylvia Bookout-Reinicke (R)		
Allen Rome (R)		
Don Steinbeisser (R)		
Brett Tramelli (D)		
Jim Whitaker (R)		
Joe McKenney (R) Chairman		
Count	<u>19</u>	<u>0</u>

Voice Vote
NNAN

House of Representatives

Roll Call Vote

BUSINESS & LABOR COMMITTEE

DATE JAN. 18, 2001 Bill NO. HJ 7 NUMBER 19-0 Unan

MOTION: REP BROWN MOVE DO PASS Voice Vote

Name	AYE	NO
Rod Bitney, V.C., Majority (R)		
Gary Matthews, V.C. , Minority (D)		
Roy Brown (R)		
Dave Gallik (D)		
Kathleen Galvin-Halcro (D)		
Dennis Himmelberger (R)		
Carol Juneau (D)		
Jim Keane (D)		
Rick Laible (R)		
Bob Lawson (R)		
Nancy Rice-Fritz (D)		
John Musgrove (D)		
Bill Price (R)		
Sylvia Bookout-Reinicke (R)		
Allen Rome (R)		
Don Steinbeisser (R)		
Brett Tramelli (D)		
Jim Whitaker (R)		
Joe McKenney (R) Chairman		
Count	<u>19</u>	<u>0</u>

COMMITTEE ABSENTEE BALLOT

DATE: 1-18-01

I hereby authorize Rep. MATTHEWS

to cast my vote(s) as follows:

HB # 234 Amendments Y

HB # 234 Y

HJR # 7 Y

Representative Carol C. Jones

S:\Absentee Ballot.frm

**MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER**

Business and Labor Committee

DATE 1-18-01

BILL NO. HB 279

SPONSOR(S) Rep. Joe McKenney

"Revises pharmacy laws"

TYPE
PROPOSER (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
☒ POI	Tony Fisher	1116 Babcock Billings, MT	Board of Pharmacy
☒ POI	Cami Robson	clancy MT	" " "
☒ POI	Randy Kuiper	Great Falls, MT	Benefits Pharmacy
☒ POI	Donna Beall	Missoula, MT	Pharmacists
☒ POI	DAVE FORBES	MISSOULA, MT	PHARMACIST
☒ POI	ANN WILLIAMS	MISSOULA, MT	EDUCATOR
☒ POI	Jim Spradon	MISSOULA, MT	PHARMACISTS
☒ POI	John Schmitt	Glacier, MT	Public sector
☒ POI	Jim J. Martin	Missoula MT	Pharmacist
☒ POI	Jim Smith		Pharm Assoc
☒ POI	Becky Dordick	Missoula, MT	Board of Pharmacy
☒ POI	Steve Nelson	Conrad MT	HTN
☒ POI	Beth Lovitt	Helena	MMA
☒ POI	Michelle Baumgartner	Glacier, MT	Board of Pharmacy

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

☒ POI DENNIS IVERSON

☒ POI Tom Ebzery

☒ POI Bruce Spencer
Jani McCaill
SUSAN C. Witte
John C. D. B.

Helena
Billings
St Vincent
Healthcare
Helena MT
Bledna MT
Helena

PhRMA

S:\visitor register.frm

Board of Pharmacy
Blue Cross Blue Shield of MT
MHA

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business and Labor Committee

DATE 1-18-01

BILL NO. HB 279

SPONSOR(S) _____

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

POI	<i>Gloria Henderson</i>		<i>Surgey Ctr</i>
POI			
POI			
POI			
POI			
POI			
POI			
POI			
POI			
POI			
POI			
POI			
POI			
POI			
POI			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

S:\visitor register.frm

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business and Labor Committee

DATE JAN. 18, 2001

BILL NO. HJ 7

SPONSOR(S) REP. DAN MCGEE

"employee travel time"

TYPE
PROPOSER (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE
CIRCLE

NAME

ADDRESS

REPRESENTING

POI	<u>John Andrew</u>	<u>P.O. Box 6518</u>	<u>State of Montana</u>
POI			
POI			
POI			
POI			
POI			
POI			
POI			
POI			
POI			
POI			
POI			
POI			
POI			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

S:\visitor register.frm



HOUSE STANDING COMMITTEE REPORT

January 18, 2001

Page 1 of 1

Mr. Speaker:

We, your committee on **Business and Labor** report that **House Bill 234** (first reading copy - white) **do pass as amended.**

Signed:

Joe McKenney
Representative Joe McKenney, Chair

And, that such amendments read:

1. Page 11, line 4.

Following: "20"

Insert: ", however, governmental agencies are not limited to the use of a cryptosystem, as defined in 2-20-103, or any other specific technology for electronic transactions provided for in [sections 1 through 18]"

- END -

Committee Vote:
Yes 19, No 0.

141136SC.hdc

*8.55
11-18*

INDEX TO BILLS IN COMMITTEE

September 10, 2001

- Committee: (S) Business and Labor -

02:05 PM

**SENATE
BUSINESS AND LABOR**

CHAIR: Taylor, Mike

VICE CHAIR: Sprague, Mike

MEMBERS:

Berry, Dale

Butcher, Edward

Cocchiarella, Vicki

Kitzenberg, Sam

Mahlum, Dale

Roush, Glenn

Ryan, Don

SECRETARY: KELLY, KYANNE

LEGISLATIVE STAFF: Campbell, Bart

INDEX TO BILLS IN COMMITTEE

September 10, 2001

- Committee: (S) Business and Labor -

02:05 PM

HB 194 SPONSOR: Bookout-Reinicke, Sylvia SHORT TITLE: Revise overtime and minimum wage exemptions for outside sales

REFERRED ON: 01/19/2001 HEARD ON: 02/02/2001

EXECUTIVE ACTION: 02/02/2001 -Bill Concurred -- VOTE: 8 - 0

FINAL DISPOSITION: 02/19/2001 Chapter Number Assigned

HB 218 SPONSOR: Facey, Tom SHORT TITLE: Regulate potable water haulers and sellers

REFERRED ON: 01/23/2001 HEARD ON: 03/05/2001

EXECUTIVE ACTION: 03/09/2001 -Bill Concurred as Amended -- VOTE: 9 - 0

FINAL DISPOSITION: 04/30/2001 Chapter Number Assigned

HB 220 SPONSOR: Lawson, Bob SHORT TITLE: Revise credit union laws

REFERRED ON: 01/22/2001 HEARD ON: 02/06/2001

EXECUTIVE ACTION: 02/06/2001 -Bill Concurred -- VOTE: 9 - 0

FINAL DISPOSITION: 02/22/2001 Chapter Number Assigned

HB 230 SPONSOR: Price, William SHORT TITLE: Revise boiler inspection requirements

REFERRED ON: 01/23/2001 HEARD ON: 03/05/2001

EXECUTIVE ACTION: 03/09/2001 -Bill Concurred as Amended -- VOTE: 7 - 2

FINAL DISPOSITION: 05/01/2001 Chapter Number Assigned

HB 234 SPONSOR: Lawson, Bob SHORT TITLE: Uniform electronic transactions act

BY REQUEST OF: Secretary Of State

REFERRED ON: 01/24/2001 HEARD ON: 03/01/2001

EXECUTIVE ACTION: 03/01/2001 -Bill Concurred -- VOTE: 8 - 0

FINAL DISPOSITION: 03/16/2001 Chapter Number Assigned

HB 235 SPONSOR: Brown, Roy SHORT TITLE: Revise use of business name identifiers registered with state

BY REQUEST OF: Secretary Of State

REFERRED ON: 01/22/2001 HEARD ON: 02/06/2001

EXECUTIVE ACTION: 02/06/2001 -Bill Concurred -- VOTE: 9 - 0

FINAL DISPOSITION: 03/01/2001 Chapter Number Assigned

MINUTES

**MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR**

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on March 1, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)

Members Excused: Sen. Dale Berry (R)
Sen. Don Ryan (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 95, 3/2/2001; HB 234,
3/2/2001; HB 120, 3/2/2001
Executive Action: HB 234; HB 138

that the main reason for this bill is to keep the agricultural scales certified.

HEARING ON HB 234

Sponsor: REPRESENTATIVE BOB LAWSON, HD 80, WHITEFISH

Proponents: Janet Doggett, Secretary of State's Chief Counsel
Joe Mazurek, Representing himself
Tony Herbert, Department of Administration
Amy Grmoljed, Verizon Wireless
Nancy Butler, State Fund
Jeanne Bauman, Credit Unions League
Peggy Trenk, Association of Realtors

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 11}

REPRESENTATIVE BOB LAWSON, HD 80, WHITEFISH, said the purpose of this bill is to make sure that transactions in the electronic marketplace are as enforceable as transactions made on paper.

Proponents' Testimony:

Janet Doggett, Secretary of State's Chief Counsel, said this would provide consistency and uniformity in electronic transactions. EXHIBIT(1)

Joe Mazurek, Representing himself, gave a hand out of what other states have done in regard to this action. EXHIBIT(2) EXHIBIT(3)

Tony Herbert, Department of Administration, said state agencies are doing more and more work electronically.

Amie Grmoljed, Verizon Wireless, said this would encourage commerce in Montana. She handed in her written testimony. EXHIBIT(4)

Nancy Butler, State Fund, said she supports this bill.

Jeanne Bauman, Credit Unions League, said she supports this bill.

Peggy Trenk, Association of Realtors, said she supports this bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR MIKE SPRAGUE asked if this bill would help it be possible to register vehicles electronically.

Joe Mazurek said yes.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 0.1}

REPRESENTATIVE BOB LAWSON, HD 80, WHITEFISH, said this bill would be limited to people who agree to conduct business electronically. He also pointed out that this act is a uniform law which would bring Montana into harmony with federal legislation.

HEARING ON HB 120

Sponsor: REPRESENTATIVE JOE MCKENNY, HD 49, GREAT FALLS

Proponents: Steve Meloy, Department of Commerce
Tim Moore, State Board of Real Estate Appraisers
Lewis Smith, Board of Nursing
Sami Butler, Montana Nurses Association
Peggy Trenk, Montana Association of Realtors
Jani McCall, Montana County Attorneys Association
Kristi Blazer, Representing herself
Jack Wells, Senator from Bozeman
Dr. George Olson, Montana State Dental Board
Lewis Smith, Board of Dentistry
Sheldon Ivers, Board of Dentistry

Opponents: Lee Wiser, Representing himself
Jonathan Mott, Representing himself

Opening Statement by Sponsor:

Lee Wiser, Representing himself, said he is not an opponent to the bill, but he is opposed to the amendments.

Jonathan Mott, Representing himself, said he is not opposed to the bill, but is opposed to the amendment proposed by Dr. Olson.

Questions from Committee Members and Responses:

SENATOR BUTCHER asked about the education necessary to become a denturist.

Lee Wiser said the education has become more stringent over the past 16 years.

SENATOR COCCHIARELLA asked about the presiding officers in hearings.

Steve Meloy said it was really an oversight, but he had some proposed amendments to take care of the oversight. EXHIBIT(13)

SENATOR ROUSH asked for an analysis of the amendments proposed by the Board of Realtors.

Steve Meloy said they involve administrative processes and that it is an attempt to micro manage this situation. He said it should be left up to the division and the Governor.

Closing by Sponsor:

{Tape : 3; Side : A; Approx. Time Counter : 7.7}

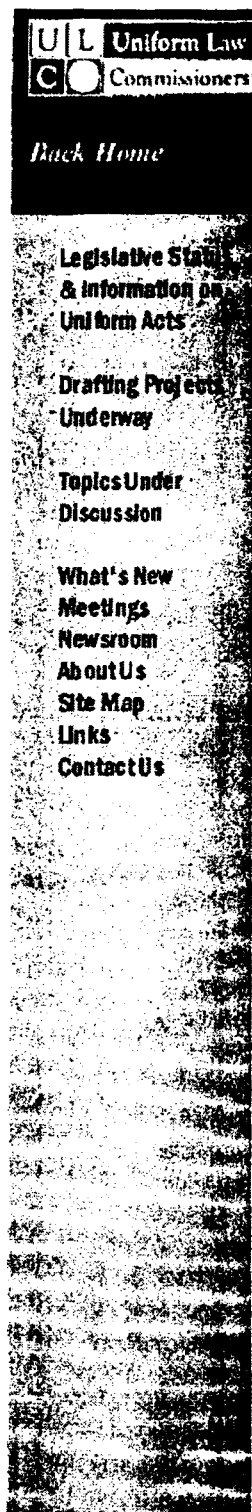
REPRESENTATIVE JOE MCKENNY, HD 49, GREAT FALLS, said this is an important bill and it was meant to be a housekeeping bill.

EXECUTIVE ACTION ON HB 234

Motion/Vote: SEN. SPRAGUE moved that HB 234 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON HB 138

Motion/Vote: SEN. ROUSH moved that HB 138 BE CONCURRED IN. Motion carried unanimously.



INTRODUCTIONS & ADOPTIONS Of Uniform Acts



SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 1

DATE

9-1-2001

BILL NO.

HB234

> Why States Should Adopt...

THE UNIFORM ELECTRONIC TRANSACTIONS ACT

The Uniform Electronic Transactions Act (UETA) allows the use of electronic records and electronic signatures in any transaction, except transactions subject to the Uniform Commercial Code. The fundamental purpose of this act is to remove perceived barriers to electronic commerce.

The UETA is a procedural statute. It does not mandate either electronic signatures or records, but provides a means to effectuate transactions when they are used. The primary objective is to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures.

There are many reasons why every state should adopt the Uniform Electronic Transactions Act.

- UETA defines and validates electronic signatures. An electronic signature is defined as "an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record."
- UETA removes writing and signature requirements which create barriers to electronic transactions.
- UETA insures that contracts and transactions are not denied enforcement because electronic media are used.
- UETA insures that courts accept electronic records into evidence.
- UETA protects against errors by providing appropriate standards for the use of technology to assure party identification.
- UETA avoids having the selection of medium (paper vs. electronic) govern the outcome of any disputes or disagreements, and it assures that parties have the freedom to select the media for their transactions by agreement.
- UETA authorizes state governmental entities to create, communicate, receive and store records electronically, and encourages state governmental entities to move to electronic media.

[Introductions & Adoptions of Uniform Acts](#) || [Drafting Projects Underway](#) || [Topics Under Discussion](#)
[What's New](#) || [Meetings](#) || [Newsroom](#) || [About Us](#) || [Site Map](#) || [Links](#) || [Contact Us](#)
[BACK HOME](#)

MEMORANDUM

To: Representative Lawson
From: Janice Frankino Doggett
Re: HB 234 UETA

Several of the proponents of this bill wanted me to address the form of an electronic record and electronic signature. In my opinion, the best way to do that is to reiterate the comments to the Act as drafted by the National Code Commissioners. Nothing in this memorandum should be construed as favoring particular comments of the Commissioners; this memorandum simply sets forth these comments to provide clarification to issues raised by parties interested in this bill. This Act as drafted requires an agreement of the parties; which is to be determined by the circumstances surrounding transactions. The Commissioners have given states guidance in the definitions of electronic record and electronic signature which are defined as:

"Electronic record." An electronic record is a subset of the broader defined term "record." It is any record created, used or stored in a medium other than paper. The term is also used in this Act as a limiting definition in those provisions in which it is used.

Information procession systems, computer equipment and programs, electronic data interchange, electronic mail, voice mail, facsimile, telex, telecopying, scanning and similar technologies all qualify as "electronic" under this Act. Accordingly information stored on a computer hard drive or floppy disc, facsimiles, voice mail messages, messages on a telephone answering machine, audio and video ape recordings, among other records, all would be electronic records under this Act.

"Electronic signature." The idea of a signature is broad and not specifically defined. Whether any particular record is "signed" is a question of fact. Proof of that fact must be made under applicable law. This Act simply assures that the signature may be accomplished through electronic means. No specific technology need be used in order to create a valid signature. One's voice on an answering machine may suffice, as may the firm name on a facsimile. It also may be shown that the requisite intent was not present and accordingly the symbol, sound or process did not amount to a signature. One may use a digital signature with the requisite intention, or one may use the private key solely as an access device with no intention to sign, or otherwise accomplish a legally binding act. In any case the critical element is the intention to execute or adopt the sound or symbol or process for the purpose of signing the related record.

The definition requires that the signer execute or adopt the sound, symbol, or process with the intent to sign the record. The act of applying a sound, symbol or process to an electronic record could have differing meanings and effects. The consequences of the act and the effect of the act as a signature are determined under other applicable law.

However, the essential attribute of a signature involves applying a sound, symbol or process with an intent to conduct a legally significant act. It is the intention that is understood in the law as a part of the word "sign" without the need for a definition.

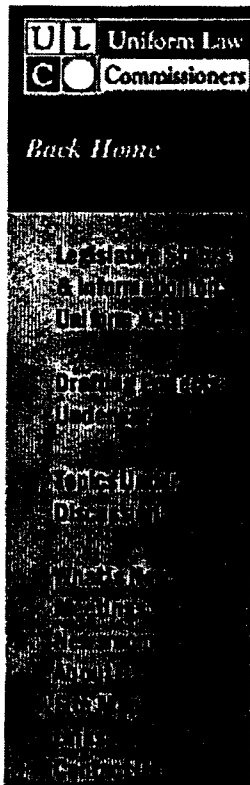
This Act establishes, to the greatest extent possible, the equivalency of electronic signatures and manual signatures. Therefore the term "signature" has been used to connote and convey that equivalency. That purpose is to overcome unwarranted biases against electronic methods of signing and authenticating records. The term "authentication" used in other laws, often has a narrower meaning and purpose than an electronic signature as used in this Act. However, an authentication under any of those other laws constitutes an electronic signature under this Act.

The precise effect of an electronic signature will be determined based on the surrounding circumstances under Section 9(d).

This definition includes as an electronic signature the standard webpage click through process. For example, when a person orders goods or services through a vendor's website, the person will be required to provide information as part of a process which will result in receipt of the goods or services. When the customer ultimately gets to the last step and clicks "I agree," the person has adopted the process and has done so with the intent to associate the person with the record of that process. The actual effect of the electronic signature will be determined from all the surrounding circumstances, however, the person adopted a process which the circumstances indicate s/he intended to have the effect of getting the goods/services and being bound to pay for them. The adoption of the process carried the intent to do a legally significant act, the hallmark of a signature.

Another important aspect of this definition lies in the necessity that the electronic signature be linked or logically associated with the record. In the paper world, it is assumed that the symbol adopted by a party is attached or located somewhere in the same paper that is intended to be authenticated, e.g. an allonge firmly attached to a promissory note, or the classic signature at the end of a long contract. These tangible manifestations do not exist in the electronic environment, and accordingly, this definition expressly provides that the symbol must in some way be linked to, or connected with the electronic record being signed. This linkage is consistent with the regulations promulgated by the Food and Drug Administration.

Finally, a digital signature using public key encryption technology would qualify as an electronic signature, as would the mere inclusion of one's name as part of an e-mail message- so long as in each case the signer executed or adopted the symbol with the intent to sign.



INTRODUCTIONS & ADOPTIONS Of Uniform Acts



STATE LABOR & EMPLOYMENT
EXHIBIT NO. 2
DATE 3-1-2001
HB 234

> A Few Facts About the...

UNIFORM ELECTRONIC TRANSACTIONS ACT

PURPOSE:

The Uniform Electronic Transactions Act is designed to support the use of electronic commerce. The primary objective of this act is to establish the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures, removing barriers to electronic commerce.

ORIGIN:

Completed by the Uniform Law Commissioners in 1999.

APPROVED BY:

American Bar Association

ENDORSED BY:

American Council of Life Insurance
Equipment Leasing Association of America

STATE ADOPTIONS:

Arizona	Iowa	North Carolina
California	Kansas	Ohio
Delaware	Kentucky	Oklahoma
Florida	Maine	Pennsylvania
Hawaii	Maryland	Rhode Island
Idaho	Michigan	South Dakota
Indiana	Minnesota	Utah
	Nebraska	Virginia
		Wyoming

2001 INTRODUCTIONS:

Alabama	Missouri	Tennessee
Arkansas	Montana	Texas
California	Nevada	US Virgin Islands
Connecticut	New Hampshire	Vermont

[Connecticut](#)[District of](#)[Columbia](#)[Illinois](#)[Massachusetts](#)[Mississippi](#)[New Hampshire](#)[New Jersey](#)[New Mexico](#)[North Dakota](#)[Oregon](#)[Vermont](#)[West Virginia](#)[Wisconsin](#)

For any further information regarding the Uniform Electronic Transactions Act, please contact John McCabe or Katie Robinson at 312-915-0195.

[Introductions & Adoptions of Uniform Acts](#) || [Drafting Projects Underway](#) || [Topics Under Discussion](#)
[What's New](#) || [Meetings](#) || [Newsroom](#) || [About Us](#) || [Site Map](#) || [Contact Us](#)
[BACK HOME](#)

©2000 National Conference of Commissioners on Uniform State Laws



INTRODUCTIONS & ADOPTIONS Of Uniform Acts



> Summary

SENATE LABOR & EMPLOYMENT

EXHIBIT NO. 3

DATE 3-1-2001

UNIFORM ELECTRONIC TRANSACTIONS ACT

BILL NO. HB234

The Uniform Law Commissioners promulgated the Uniform Electronic Transactions Act (UETA) in 1999. It is the first comprehensive effort to prepare state law for the electronic commerce era. Many states have already adopted legislation pertaining to such matters as digital signatures, but UETA represents the first national effort at providing some uniform rules to govern transactions in electronic commerce that should serve in every state. Although related to the Uniform Commercial Code, the rules of UETA are primarily for "electronic records and electronic signatures relating to a transaction" that is not subject to any article of the Uniform Commercial Code, except for Articles 2 and 2A. A "transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs. Much is excluded in this definition, including required notices, disclosures or communications by courts and governmental agencies.

UETA applies only to transactions in which each party has agreed by some means to conduct them by electronically. Agreement is essential. Nobody is forced to conduct to electronic transactions. Parties to electronic transactions come under UETA, but they may also opt out. They may vary, waive or disclaim most of the provisions of UETA by agreement, even if it is agreed that business will be transacted by electronic means. The rules in UETA are almost all default rules that apply only in the event the terms of an agreement do not govern.

Electronic commerce means, of course, persons doing business with other persons with computers and telephone or television cable lines. The Internet is the great marketplace for these kinds of transactions; a marketplace developing almost daily in 1999 (and presumably into the foreseeable future). The outlines and boundaries for this marketplace are still unknown and developments are not predictable. It is not possible to predict with any

certainly now new law should develop to serve that marketplace or any other electronic marketplace that might develop in the future.

However, a few things are known about the existing electronic marketplace and there are some assumptions about the law that governs transactions within it that can be made with reasonable certainty in 1999, and that will continue to be reasonably certain into the future. Electronic transactions are conducted by communicating digitized information from one person to another. That digitized information can be communicated and stored without the use of paper, and the basic language of electronic transactions is fully and inherently paperless. In fact, relying on paper for the memorialization of transactions and upon manual signatures for verifying them are most likely to impede electronic transactions, adding to their costs. And there is no benefit to any party to an electronic transaction, with very few exceptions, in requiring that they be memorialized on paper with signatures that are manual. The need to expand requirements in the law for writings and manual signatures so that electronic records and electronic signatures will satisfy those requirements, is the one thing that is reasonably certain with respect to electronic transactions.

UETA does not attempt to create a whole new system of legal rules for the electronic marketplace. The objective of UETA is to make sure that transactions in the electronic marketplace are as enforceable as transactions memorialized on paper and with manual signatures, but without changing any of the substantive rules of law that apply. This is a very limited objective--that an electronic record of a transaction is the equivalent of a paper record, and that an electronic signature will be given the same legal effect, whatever that might be, as a manual signature. The basic rules in UETA serve this single purpose.

The basic rules are in Section 7 of UETA. The most fundamental rule in Section 7 provides that a "record or signature may not be denied legal effect or enforceability solely because it is in electronic form." The second most fundamental rule says that "a contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation." The third most fundamental rule states that any law that requires a writing will be satisfied by an electronic record. And the fourth basic rule provides that any signature requirement in the law will be met if there is an electronic signature.

Almost all of the other rules in UETA serve the fundamental principles set out in Section 7, and tend to answer basic legal questions about the use of electronic records and signatures. Thus, Section 15 determines when information is legally sent or delivered in electronic form. It establishes when electronic delivery occurs--when an electronic record capable of retention by the recipient is legally sent and received. The traditional and statutory rules that govern mail delivery of the paper memorializing a transaction can't be applied to electronic transactions. Electronic rules have

to be devised., and UETA provides the rule.

Another rule that supports the general validity of electronic records and signatures in transactions is the rule on attribution in Section 9. Electronic transactions are mostly faceless transactions between strangers. UETA states that a signature is attributable to a person if it is an act of that person, and that act may be shown in any manner. If a security procedure is used, its efficacy in establishing the attribution may be shown. In the faceless environment of electronic transactions, the obvious difficulties of identification and attribution must be overcome. UETA, Section 9 gives guidance in that endeavor.

Much has been much written about digital signatures in electronic commerce. What is a digital signature? It is really a method of encryption that utilizes specific technology. In the faceless environment of the electronic marketplace and particularly the Internet, such technologies are highly useful.

It is not wholly certain what the legal impact of these technologies should be. For that reason UETA may not be characterized as a digital signature statute. It does facilitate the use of digital signatures and other security procedures in rules such as the one in Section 9 on attribution. Section 10 provides some rules on errors and changes in messages. It favors the party who conforms to the security procedure used in the specific transaction against the party who does not, in the event there is a dispute over the content of the message.

But nothing in UETA requires the use of a digital signature or any security procedure. It is technologically neutral. Persons can use the most up-to-date digital signature technology, or less sophisticated security procedures such as passwords or pin numbers. Whatever parties to transactions use for attribution or assuring message integrity may be offered in evidence if there is a dispute.

UETA is procedural, not substantive. It does not require anybody to use electronic transactions or to rely upon electronic records and signatures. It does not prohibit paper records and manual signatures. Basic rules of law, like the general and statutory law of contracts, continue to apply as they have always applied.

There are three provisions in UETA that need special attention, and that are not directly in support of the basic rules in Section 7. First, UETA excludes transactions subject to the Uniform Commercial Code, except for those under Articles 2 and 2A, the Uniform Computer Information Transactions Act, laws governing estates and trusts, and any other specific laws that a state wants to exempt from the rules applied in UETA. Some writing and signature requirements in state law do not impact the enforceability of transactions, and have objectives that should not be affected by adoption of a statute like UETA. The limitation of UETA to agreed electronic transactions will eliminate any conflict with other writing requirements for the most part. However, there is some room for jurisdiction-specific tailoring of UETA.

However, there is some room for jurisdiction-specific tailoring of UETA permitted in each state, to assure no conflict. Exclusions should be carefully and conservatively selected. Most law relating to contracts and transactions between persons will serve the public better if electronic records and signatures are recognized.

Second, UETA provides for "transferable records" in Section 16. Notes under Article 3 and documents under Article 7 of the Uniform Commercial Code are "transferable records" when in electronic form. Notes and documents are negotiable instruments. The quality of negotiation relies upon the note or document as the single, unique token of the obligations and rights embodied in the note or document. Maintaining that quality as a unique token for electronic records is the subject of Section 16. A transferable record exists when there is a single authoritative copy of that record existing and unalterable in the "control" of a person. A person in "control" is a "holder" for the purposes of transferring or negotiating that record under the Uniform Commercial Code. Section 16 is essentially a supplement to the Uniform Commercial Code, until its relevant articles can be fully amended or revised to accommodate electronic instruments.

Third, UETA clearly validates contracts formed by electronic agents. Electronic agents are computer programs that are implemented by their principals to do business in electronic form. They operate automatically, without immediate human supervision, though they are certainly not autonomous agents. They are a kind of tool that parties use to communicate. Section 14 provides that a person may form a contract by using an electronic agent. That means that the principal, which is the person or entity which provides the program to do business, is bound by the contract that its agent makes.

When somebody buys something on the Internet, therefore, that person will be assured that the agreement is valid, even though the transaction is conducted automatically by a computer that solicits orders and payment information. Did anyone really think that every order on the Internet involves a direct communication with a human being?

Three sections of UETA deal with electronic records that state governmental agencies create and retain. Section 17 allows a state to designate one agency or officer as the authority on creation and retention of governmental records. Section 18 allows a state to designate which agency or officer regulates the communication of electronic records and use of electronic signatures between agencies and other persons. Section 19 allows a state to designate an agency or officer to set standards that promote consistency and interoperability between state agencies with respect to the use of electronic records and signatures. All three sections are optional sections, there for the state that needs them, but not mandatory for all states in order to implement uniformity. These are very important provisions, however, because they provide a state with some root law for organizing the electronic business of the state. They should be given very serious consideration in every state.

It is not possible to cover every aspect of UETA in a short summary. This summary highlights some important aspects. The adoption of these rules will be a boon to electronic commerce. They will not artificially skew any market or make any substantive law relating to contracts any different from that governing transactions memorialized on paper. Every state should adopt them as quickly as possible.

[Introductions & Adoptions of Uniform Acts](#) || [Drafting Projects Underway](#) || [Topics Under Discussion](#)
[What's New](#) || [Meetings](#) || [Newsroom](#) || [About Us](#) || [Site Map](#) || [Links](#) || [Contact Us](#)
[BACK HOME](#)

©2000 National Conference of Commissioners on Uniform State Laws

DATE 3-1-2001

3-1-2001

[illegible]

DATE 3-1-2001 BILL NO. AB234 NUMBER 1

MOTION: Sen Sprague moves Be Concurred

[illegible]

DATE March 1, 2001

SENATE COMMITTEE ON Business & Labor

BILLS BEING HEARD TODAY: HB 95, HB 234, HB 120

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Sheldon Ivers	727-2444	Board of Dentistry	120	✓	
RON ASHA BRAMER	444-9711	STATE FARM INS	234	✓	
TIM MOORE	442-6180	Board of Appraisers	120	✓	
Jeanne Bauman	442-9081	MT Credit Unions League	234	✓	
LEE WISER	587-3631	SELF (DENTURIST)	120	✓	✓
Barbara Swelke	841-2341	Board of Nursing	120		
Peggy Trenk	443-4032	MT. ASSOC. OF Realtors	120 234	✓	
Jack Kane	444-3934	Commerce	95	✓	
Lewis Smith	442-2980	Boards of Dentistry & Nursing	120	✓	
Tony HERBERT	4111	DOA/ISO	134	✓	
Steve Picher	442-3426	MT Stockgrowers	HB 95	✓	
John Sample	443-7487	MT CATTLEWOMEN	HB 95	✓	
Bill Stebens	442-6354	MT Food Bank		✓	✓

Jani, McCall 442-0216 Deac. Bulling Assoc 120 ✓
 Son north 442-3261 self 120

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Amee Grmolitz 443-6820 Verizon HB 234 ✓

Sam Butler 442-6710 MNA HB 120 support

positive depends
on amendments
of HB 120

DATE March 1, 2001

SENATE COMMITTEE ON Business & Labor

BILLS BEING HEARD TODAY: HB 95, HB 234, HB 120

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Charles Brooks	698-2380	B. Hines Chamber	HB 95		☒
Brenda H. Clair	841-2302	POL / Commerce	HB 120		☐
Dina Aldington	841-2303	POL / Commerce	HB 120		☐
Nancy Butler	444-7725	State Fund	HB 234	☒	☐
Jennifer Massman	641-2317	POL / Commerce	HB 120		☐
Jeanne Worscott	841-2333	POL	HB 120		☐
Janice Jaggett	444-5376	So S	HB 234	☒	☐

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

LEGISLATIVE TAPE LOG

COMMITTEE:

Senate Business and Labor

DATE:

3-1-2001

MINUTES

CONTENT NOTES

Sponsor
OPENS 0.8

Rep Gary Matthews - Mill City
HB 95 (1.9 what it is)

Proponents 3.3

Jack Kane, Bureau of Weights & Measures / Dept. of Commerce
(4.7 basically 2 parts) (5.3 next of the bill)

9.0

Steve Pitcher
MT. Stock growers

9.9

Tom Semple, Mt. Cattle women

Opponents 10.3

Bill Stevens, Food distr. Assoc
"Do Not put it into rule"

11.1

Brad Griffen, Mt Retail Assoc
"Not rule making"

12.0

Charles Brooks, Bldg Chamber Commerce

Questions 14.6

Sen Sprague

Jack Kane Mont on pt. of Sale scales

21.7

Sen. Sprague

Steve Pitcher

24.4

Sen Mahlum

Jack Kane

LEGISLATIVE TAPE LOG

COMMITTEE:

Senate Business and Labor

DATE:

3-1-2001

MINUTES

CONTENT NOTES

26.3

Butcher

0.0 Tape 1
Side 2

Jack Kane

Sen C.

Jack Kane

Sen. Sprague

JACK KANE

~~SPONSOR~~

5.1

Chair Taylor

Rep. Matthews

7.3

Sen Butcher

Rep. Matthews

SPONSOR
CLOSES

8.1

Rep. Matthews

CLOSES HB 95

SPONSOR
OPENS

11.0

Rep Bob Lawson, HD 80, Whitefish

HB 234 (Objective 12.5) electronic record
is the same as paper

PROPOSER

13.7

Janet Dossett, Sec State Chief Counsel

Exhibit 1

17.3

Joe Mazurek, Representing himself

Exhibit 2, 3

23.0

Tommy Herbert, Dept. of Admin.

LEGISLATIVE TAPE LOG

COMMITTEE:

Senate Business and Labor

DATE:

3-1-2001

MINUTES

CONTENT NOTES

24.0

Amy Bromberg, Verizon Wireless

Exhibit 4

26.0

Nancy Butler, State Fund

26.3

Jeanne Bauman, Mt.

26.6

Peggy Trenk,

No opponents

Questions 27.0

Sen Sprague

Joe Mazurek

Rep. Lawson

Closes HB 234

Rep. Joe McKenny, HB 49, GF

HB 120

(Brought by Dept. of Comm)

Steve Meloy, Ad. Prof & Occ. Licensing Division
Dept. of Commerce

Exhibit 5

Tim Moore, State Board of Real Estate
Appraisers

Sponsor Closes 0.1 Tape 2
Side 1

Sponsor Closes 3.3

Proposed

5.1

11.5

LEGISLATIVE TAPE LOG

COMMITTEE:

DATE:

Senate Business and Labor
3-1-2001

MINUTES

CONTENT NOTES

14.8

Lewis Smith, legal Council for
Exhibit 6, 7 - Board of Nursing
Board of Dentistry

18.1

Sami Butler, Mt. Nurses Assoc

19.1

Peggy Trenk Mt. Assoc of Realtors

19.3

Jani McCall, Mt. Co. Atty Assoc

Exhibit 8, 9

22.4

Kristi Blozer, Representing Self

Exhibit 10

26.3

JAEC Wells, Senator from Bozeman

0.1 ^{to page 2}
_{side}

Dr. George O'Sora, Mt. St. Dental Board

Exhibit 11

5.6

Lewis Smith Board of Dentistry

Exhibit 12

12.1

Sheldon Davis, Board of Dentistry

opponents

13.0

Lee Hysen Wiser
Opposes Amendment

LEGISLATIVE TAPE LOG

COMMITTEE:

Senate Business and Labor

DATE:

3-1-2001

MINUTES

20.7

CONTENT NOTES

Jonathan Moku ²

Questions 25.2

0.1 ^{top 3}
_{side 1}

5.4

SPONSOR
CLOS 7.7

8.4

Butcher

Bee Wiser

Sen C

Steve Meloy Exhibit 13

Sen Nours

Steve Meloy

Rep Joe McKenny

HB 120

EX Action



AN ACT ADOPTING THE UNIFORM ELECTRONIC TRANSACTIONS ACT; ALLOWING BUSINESS, COMMERCIAL, AND GOVERNMENTAL TRANSACTIONS TO OCCUR ELECTRONICALLY; PROVIDING RECOGNITION OF ELECTRONIC RECORDS, SIGNATURES, AND TRANSACTIONS; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Short title. [Sections 1 through 18] may be cited as the "Uniform Electronic Transactions Act".

Section 2. Definitions. In [sections 1 through 18]:

(1) "agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(2) "automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(3) "computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(4) "contract" means the total legal obligation resulting from the parties' agreement as affected by [sections 1 through 18] and other applicable law.

(5) "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(6) "electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances, in whole or in part,

without review or action by an individual.

(7) "electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(8) "electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(9) "governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

(10) "information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(11) "information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(12) "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

(13) "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) "security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(15) "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(16) "transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

Section 3. Scope. (1) Except as otherwise provided in subsection (2), [sections 1 through 18] apply to electronic records and electronic signatures relating to a transaction.

(2) [Sections 1 through 18] do not apply to a transaction to the extent it is governed by:

- (a) a law governing the creation and execution of wills, codicils, or testamentary trusts; and
- (b) Title 30, chapter 1, other than 30-1-107 and 30-1-206, and chapters 3 through 9.

(3) [Sections 1 through 18] apply to an electronic record or electronic signature otherwise excluded from the application of [sections 1 through 18] under subsection (2) to the extent it is governed by a law other than those specified in subsection (2).

(4) A transaction subject to [sections 1 through 18] is also subject to other applicable substantive law.

Section 4. Use of electronic records and electronic signatures -- variation by agreement. (1) [Sections 1 through 18] do not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(2) [Sections 1 through 18] apply only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(3) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(4) Except as otherwise provided in [sections 1 through 18], the effect of any of its provisions may be varied by agreement. The presence in certain provisions of [sections 1 through 18] of the words "unless otherwise agreed", or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(5) Whether an electronic record or electronic signature has legal consequences is determined by [sections 1 through 18] and other applicable law.

Section 5. Construction and application. [Sections 1 through 18] must be construed and applied:

- (1) to facilitate electronic transactions consistent with other applicable law;
- (2) to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and
- (3) to effectuate its general purpose to make uniform the law with respect to the subject of [sections 1 through 18] among states enacting it.

Section 6. Legal recognition of electronic records, electronic signatures, and electronic contracts.

- (1) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.
- (2) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.
- (3) If a law requires a record to be in writing, an electronic record satisfies the law.
- (4) If a law requires a signature, an electronic signature satisfies the law.

Section 7. Provision of information in writing -- presentation of records. (1) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(2) If a law other than [sections 1 through 18] requires a record to be posted or displayed in a certain manner, to be sent, communicated, or transmitted by a specified method, or to contain information that is formatted in a certain manner, the following rules apply:

- (a) The record must be posted or displayed in the manner specified in the other law.
- (b) Except as otherwise provided in subsection (4)(b), the record must be sent, communicated, or transmitted by the method specified in the other law.
- (c) The record must contain the information formatted in the manner specified in the other law.
- (3) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(4) The requirements of this section may not be varied by agreement, but:

(a) to the extent a law other than [sections 1 through 18] requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (1) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(b) a requirement under a law other than [sections 1 through 18] to send, communicate, or transmit a record by first-class mail, postage prepaid, or regular United States mail may be varied by agreement to the extent permitted by the other law.

Section 8. Attribution and effect of electronic record and electronic signature. (1) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(2) The effect of an electronic record or electronic signature attributed to a person under subsection (1) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

Section 9. Effect of change or error. If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(2) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(a) promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(b) takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(c) has not used or received any benefit or value from the consideration, if any, received from the other person.

(3) If neither subsection (1) nor (2) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(4) Subsections (2) and (3) may not be varied by agreement.

Section 10. Notarization and acknowledgment. If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

Section 11. Retention of electronic records -- originals. (1) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record that:

(a) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(b) remains accessible for later reference.

(2) A requirement to retain a record in accordance with subsection (1) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(3) A person may satisfy subsection (1) by using the services of another person if the requirements of that subsection are satisfied.

(4) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (1).

(5) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (1).

(6) A record retained as an electronic record in accordance with subsection (1) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after [the effective date of this act] specifically prohibits the use of an electronic record for the specified purpose.

(7) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

Section 12. Admissibility in evidence. In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

Section 13. Automated transaction. In an automated transaction, the following rules apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and that the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(3) The terms of the contract are determined by the substantive law applicable to it.

Section 14. Time and place of sending and receipt. (1) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(a) is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(b) is in a form capable of being processed by that system; and

(c) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient that is under the control of the recipient.

(2) Unless otherwise agreed between a sender and the recipient, an electronic record is received

when:

(a) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(b) it is in a form capable of being processed by that system.

(3) Subsection (2) applies even if the place the information processing system is located is different from the place the electronic record is considered to be received under subsection (4).

(4) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is considered to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(a) If the sender or the recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction.

(b) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be.

(5) An electronic record is received under subsection (2) even if no individual is aware of its receipt.

(6) Receipt of an electronic acknowledgment from an information processing system described in subsection (2) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(7) If a person is aware that an electronic record purportedly sent under subsection (1), or purportedly received under subsection (2), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

Section 15. Transferable records. (1) In this section, "transferable record" means an electronic record that:

(a) would be a note under Title 30, chapter 3, or a document under Title 30, chapter 7, if the electronic record were in writing; and

(b) the issuer of the electronic record expressly has agreed is a transferable record.

(2) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(3) A system satisfies subsection (2), and a person is considered to have control of a transferable record, if the transferable record is created, stored, and assigned in a manner that:

(a) a single authoritative copy of the transferable record exists that is unique, identifiable, and, except as otherwise provided in subsections (3)(d) through (3)(f), unalterable;

(b) the authoritative copy identifies the person asserting control as:

(i) the person to which the transferable record was issued; or

(ii) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(c) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(d) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(e) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(f) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(4) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in 30-1-201(20), of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under Title 30, chapters 1 through 9, including, if the applicable statutory requirements under 30-3-302(1), 30-7-501, or 30-9-350 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.

(5) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under Title 30, chapters 1 through 9.

(6) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

Section 16. Creation and retention of electronic records and conversion of written records by governmental agencies. Each governmental agency shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records.

Section 17. Acceptance and distribution of electronic records by governmental agencies. (1) Except as otherwise provided in [section 11(5)], each governmental agency shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(2) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (1), the secretary of state, giving due consideration to security, may specify:

(a) the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(b) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(c) control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(d) any other required attributes for electronic records that are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(3) Except as otherwise provided in [section 11(5)], [sections 1 through 18] do not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

Section 18. Interoperability. (1) The secretary of state may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.

(2) The secretary of state may adopt rules to implement [sections 1 through 18] for state government that are consistent with the provisions of Title 2, chapter 20, however, governmental agencies are not limited to the use of a cryptosystem, as defined in 2-20-103, or any other specific technology for electronic transactions provided for in [sections 1 through 18].

Section 19. Codification instruction. [Sections 1 through 18] are intended to be codified as an integral part of Title 30, and the provisions of Title 30 apply to [sections 1 through 18].

Section 20. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. Effective date. [This act] is effective July 1, 2001.

Section 22. Applicability. [This act] applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after July 1, 2001.

- END -